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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,989	10/13/2004	Bruno Bret	935.44285X00	2221

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EXAMINER
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GIBSON, KESHIA L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/510,989

Applicant(s)

BRET ET AL

Examiner

Keshia Gibson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/13/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it does not meet the 50-word minimum. The abstract is also objected to for containing the implied language "The present invention relates to." It is suggested this language be removed; no replacement language is necessary. Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 6-8, 10-13, and 18-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sine et al. (US 6,183,766).

In regard to Claims 6, 11-12, Sine et al. disclose a composition comprising 0.1% to 10% zinc gluconate; the composition may be comprised within a substrate comprising at least 50% cellulosic fibers (whole document, especially column 10, lines 3-40, column 16, lines 32-62; further see Thaman et al. (US 4,981,227, whole document, especially Examples and column 2, line 60-column 4, line 42, especially column 3, lines 26-30), which is incorporated by reference for use as a substrate in column 16, lines 40-41). It is noted that, although Sine et al. disclose an article for skin sanitizing but do not expressly disclose that zinc gluconate serves as an antimicrobial agent; however, this is

Art Unit: 3761

considered to be an inherent property of the composition. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, a substrate comprising cellulose and zinc gluconate) except for a property or function (in the present case, zinc gluconate as an antimicrobial agent) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

In regard to Claims 10 and 20, the substrate may be a nonwoven made by an air-laying process (i.e., dry method) or may comprise wood pulp fibers obtained by a water-laying method (i.e., wet method) (Thaman et al.: column 3, lines 26-52). The recitations "obtained by the dry method" and "obtained by the wet method" are considered to be a product-by-process limitation. The method of forming the product is not relevant to the issue of patentability of the product itself; therefore, the limitations "obtained by the dry method" and "obtained by the wet method" have been giving little patentable weight.

In regard to Claims 7, 8 and 13, the article may be a wipe for sanitizing skin, which is considered to be a sanitary article, a baby article, and a hand wipe (abstract, column 16, line 35, also see Thaman et al.).

Art Unit: 3761

In regard to Claim 18, the substrate may further comprise percentages by weight of synthetic fibers, which fall within the range of 5% to about 40% (Thaman et al.: Examples, column 2, line 60-column 3, line 30).

In regard to Claim 19, the nonwoven substrate may have a weight that falls within the range of about 40 to 120 grams per square meter (about 33 to 100 grams per square yard) (Examples).

7. Claims 9 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sine et al.

In regard to Claims 9 and 14-16, Sine et al. disclose the claimed invention but do not expressly disclose that the substrate is a food packaging article, an absorbent pad, or an impregnated diaper. However, it has been held that a recitation with respect to the manner in which a claimed invention is intended to be employed does not differentiate the claimed invention from a prior art satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). *In re Paulsen*, 30 F.3d 1475, 31 USPQ 2d 1671 (Fed. Cir. 1994).

In regard to Claim 17, as discussed for claim 11, the substrate comprises from about 0.1% to about 10% by weight of zinc gluconate, which overlaps a range of about 0.05% to 1% by weight of antimicrobial agent. A prima facie case of either anticipation or obviousness has been established when the prior art discloses a range which touches, overlaps or is within the claimed range, but no specific examples falling within the claimed range are disclosed and the examiner can not determine whether or not the

Art Unit: 3761

reference anticipates or obviates the claimed invention but has a basis for shifting the burden of proof to applicant.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Trinh et al. (US 5,663,134), Otsu et al. (US 5,696,169), Beerse et al. (US 6,294,186), Brun et al. (US 6,358,469), Gabbay (US 2004/0167485), and Gupta (US 2005/0058672).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keshia Gibson whose telephone number is (571) 272-7136. The examiner can normally be reached on M-F 8:30 a.m. - 6 p.m., out every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keshia Gibson  
Examiner  
Art Unit 3761

klg 11/8/05

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

